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| EXAMINER HAYES, KRISTEN C | | | | |
| ART UNIT 3643 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/529,544

Applicant(s)

UMEGARD ET AL.

Examiner

Kristen C. Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/16/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CI/CD)
Paper No(s)/Mail Date 20080616
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van den Berg EP 0713641 in view of Moskvina US Patent 5,161,483.

3. Regarding claim 1, Van den Berg discloses a method for calibrating at least one milk meter (3) in a milking system comprising at least one milking station (100) having at least one milk meter that measures at least one value of a parameter that corresponds to the milking performance of a milking animal (column 1; lines 39-40, 45-46) said milking station is accessible to a herd of milking animals (column 1, lines 1-2), characterized in that said method comprises the steps of: determining an internal or external reference value which reflects the amount of milk received from a number of milking animals during a selected time period in a reference unit (column 3, lines 54 – column 4, line 1), retrieving all measured values during the selected time period for each milk meter that by itself contribute to the amount of milk received by said reference unit (6), comparing said reference value with the sum of all retrieved measured values (column 4, lines 1-4) and determining the need of a calibration by comparing an expected value of the milking performance with the measured value (Van den Berg, abstract). Van den Berg does not teach calculating a correction function for at least one of said milk meters, and using said calculated correction function to adjust the measured value from said at least one milk meter. However, Moskvina teaches calculating a correction function (column 8, lines 60-63) for at

least one of said milk meters, and using said calculated correction function to adjust the measured value from said at least one milk meter (column 8, lines 63-67). Calculating the correction function, and using said calculated correction function to adjust the measured value can improve the accuracy of the meter that measures the milking performance of the milking animal, as known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method steps of Van den Berg with the teachings of Moskvina in order to adjust the measured value of the milking meter, as known in the art. The method of Van den Berg is then inherently performed.

4. Regarding claim 3, Van den Berg in view of Moskvina discloses a device with the limitations of claim 1. Moskvina teaches said reference unit being a receiver (16) that collects the milk in the system after milking of each milking animal, and said step of determining the reference value is performed by measuring the amount of the milk in the receiver, thus said reference value is an internal reference value (column 4, lines 44-55). The receiver collecting the milk in the system after the milking of each animal would provide a central location for the milk to be measured. This way, the milk could be measured at rest instead of as it was flowing through the lines, which would provide a more accurate measure of parameters such as volume, weight, and yield. Given the structure of the combination, the method is inherently performed, as discussed above. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Van den Berg with the receiver and inherent method steps of Moskvina to provide a more accurate measurement of the parameters.

5. Regarding claim 4, Van den Berg in view of Moskvina discloses a device with the limitations of claim 1. Van den Berg further discloses said reference unit being an intermediate milk meter (16) which is directly connected to at least one milk meter (5), and said step of determining the reference value is performed by measuring a value of a milking performance

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parameter of said intermediate milk meter, thus said reference value is an internal reference value, which may be compared to the values measured by each milk meter (column 4, lines 44-55).

6. Regarding claims 8 and 9, Van den Berg in view of Moskvina discloses a device with the limitations of claim 1. The correction function selected to be equal to 1 unless the reference values deviate more than a predetermined amount from the sum of all retrieved measured milking performance values is not taught. When comparing reference values to measured values to achieve a ratio of the two, if the values differ there will be a coefficient greater or less than 1. If the values were the same, meaning there is no difference or error between the two, then the ratio would be 1. The coefficient would then be multiplied by the measured value to correct it to the reference value. If the coefficient were 1, it would still be multiplied by the measured value, which would not change it, signifying that there was no difference between the two. Said predetermined amount selected to be 5% is not taught. The amount that the reference value deviated from the measured value would be the error of the value. It is common for those skilled in the art to allow an acceptable amount of predetermined error in their systems, usually less than 10%. This acceptable amount of error would ensure that the system wasn't constantly correcting itself over small insignificant errors that would probably have little or no effect on the system. Also, given the structure, the method is inherently performed, as discussed above. Therefore, it would have been obvious to one skilled in the art that device of Van den Berg in view of Moskvina was able to select a correction function equal to 1 unless the reference values deviate more than a predetermined amount (5%) from the sum of all retrieved measured milking performance values, since the value of the correction function could aid in controlling the error in the system.

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7. Regarding claim 10, Van den Berg in view of Moskvina discloses a device with the limitations of claim 1. Moskvina teaches the milking system comprising a control device (31) connected to each milk meter, said internal or external reference value being accessible to said control unit, and said calculations of correction functions being performed in said control unit (column 4, lines 33-35). The control device would be a simple and efficient way to calculate the correction functions, as known in the art. The control device would save time, effort, and reduce the chance of human error being introduced into the calculations. Given the structure, the method is inherently performed, as discussed above. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Van den Berg with the control device and inherent method steps of Moskvina to save time, effort, and reduce the chance of human error being introduced into the calculations.

8. Claims 1 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wendt et al (A method for continuous automatic monitoring of accuracy of milk recording equipment).

9. Regarding claim 1, Wendt discloses a method for calibrating at least one milk meter (Wendt, page 339: lines 1-2) in a milking system comprising at least one milking station (Wendt, Table 1) having at least one milk meter that measures at least one value of a parameter that corresponds to the milking performance of a milking animal (the milk meter of Wendt measures the production of milk from the animal) said milking station is accessible to a herd of milking animals (Wendt, Table 1), characterized in that said method comprises the steps of: determining an internal or external reference value which reflects the amount of milk received from a number of milking animals during a selected time period in a reference unit (Wendt, page 341: Expected value for single milk yield, lines 1-3), retrieving all measured values during the selected time period for each milk meter that by itself contribute to the amount of milk received by said reference unit (Wendt, Figure 1), comparing said reference value with the sum of all retrieved

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measured values (Wendl, Figure 1) and determining the need for calibration by comparing an expected value of the milking performance with the measured value (Wendl, Summary). Wendl does not teach calculating a correction function for at least one of said milk meters, and using said calculated correction function to adjust the measured value from said at least one milk meter. However, Moskvina teaches calculating a correction function (column 8, lines 60-63) for at least one of said milk meters, and using said calculated correction function to adjust the measured value from said at least one milk meter (column 8, lines 63-67). Calculating the correction function, and using said calculated correction function to adjust the measured value can improve the accuracy of the meter that measures the milking performance of the milking animal, as known in the art. Also, calculating the correction function and using the calculated correction function to adjust the measured value is a predictable result of gathering the measured and expected values. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method steps of Wendl with the teachings of Moskvina in order to adjust the measured value of the milking meter, as known in the art.

10. Regarding claim 5, Wendl in view of Moskvina discloses a device with the limitations of claim 1. But does not disclose an external unit or an external milk meter. However, Moskvina discloses a milk meter (16) and a unit (5). Making the milk meter and unit of Moskvina external would allow for the system to be measured from outside the system. This would eliminate the possibility of intermediate error and allow the user to determine if the entire system was functioning properly. The reference value being determined by measuring the milk transferred from the receiver (as best understood) to the external unit would provide a value which could be used to determine the functionality of the milk meters, as known in the art and discussed above. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

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invention to modify the device of Wendl in view of Moskvina so the milk meter and unit of Moskvina was external, as discussed above.

11. Regarding claim 6, Wendl in view of Moskvina discloses a method with the limitations of claim 1. Not disclosed is determining the amount of milk in the receiver prior to transferring the milk to the external unit of comparing the amount of milk or calculating a correction function. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Wendl in view of Moskvina to include these method steps since these method steps would provide the predictable results of calibrating the system.

12. Regarding claim 7, Wendl in view of Moskvina discloses a method with the limitations of claim 1. Not disclosed is recalibrating the milk meters when the correction function has been calculated. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Wendl in view of Moskvina and recalibrate the milk meters that contribute to the amount of milk received by the receiver (as best understood) when the correction function had been calculated because doing so would provide the predictable results of maintaining the accuracy of the system.

Response to Arguments

13. Applicant's arguments filed 09 November 2007 have been fully considered but they are not persuasive.

14. With regards to the applicant's arguments of amended claim 1, the examiner maintains the rejection. Van Den Berg discloses a milk meter (3) (Van den Berg, column 2: line 30). Van den Berg also discloses that it is known in the art to use a milk meter to calculate milk yield using a milk meter (Van den Berg, column 4: line 20). Calibrating a milk meter would predictably be done by using the information gathered from using the device of Van den Berg and

Moskvin's method of calculating a correction function. Wendl discloses the milk meters as being determined to be in need of calibration, as discussed above. Moskvin is still seen as teaching using a correction function to adjust the measured value from a milk meter.

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
Oct. 13, 08

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643